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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT - 5 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Eligibility for the Specialized)	
Mobile Radio Services)	GN Docket No. 94-90
and Radio Services in the)	
220-222 Mhz Land Mobile Band)	
and Use of Radio Dispatch)	
Communications)	

To: The Commission

COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to 47 C.F.R. § 1.415, hereby files its comments on the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.¹ In the NPRM the Commission seeks comment on whether to repeal the prohibition on wireline common carriers holding licenses in the Specialized Mobile Radio ("SMR") service and in the commercial 220-222 MHz land mobile service. It also seeks comment on whether to repeal the prohibition on the provision of dispatch service by common carrier licensees. PRTC supports the Commission's tentative conclusion that the prohibition on wireline carriers holding SMR licenses should be lifted. See NPRM at ¶ 15.

¹ FCC 94-202, released August 11, 1994.

The Commission did not articulate the reasons for the SMR wireline prohibition when it originally adopted it,² but it has since put forth several suggested bases for the prohibition, none of which still apply. The Commission has suggested first that when it originally allocated spectrum for the SMR service, it was concerned about the distinction between private and common carrier services and the fact that it wanted SMR to remain a purely private service.³ With the adoption of the 1993 Omnibus Budget Reconciliation Act ("1993 Budget Act") and its new framework for the regulation of all mobile radio services, however, this concern is moot because SMR which is interconnected to the local telephone network is now classified and regulated as a common carrier service.⁴ If the SMR service is not interconnected to the local telephone network, it is classified and regulated as a private radio service.⁵

² See Land Mobile Radio Service, Second Report and Order, 46 FCC 2d 752 (1974), recon., 51 FCC 2d 945 (1975), aff'd sub nom. NARUC v. FCC, 525 F.2d 630 (D.C. Cir.), cert. denied, 425 U.S. 992 (1976).

³ Amendment of Part 90 of the Commission's Rules Governing Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band, 7 FCC Rcd 4398 (1992) ("Termination Order").

⁴ Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1450 (1994) ("CMRS Second Report and Order").

⁵ Id.

The Commission also suggested in 1992 that its concern in 1974 had been about creating a competitive market for SMR.⁶ This apparently had two components: "the public interest in ensuring that SMRs are available as a business opportunity for small entrepreneurs and the desire to prevent discriminatory interconnection practices by wirelines."⁷ Again, however, these concerns no longer exist. As the Commission noted in its NPRM (at ¶ 16), the complete dismantling of the former Bell Company system and the growth of mobile services in general, including cellular services and personal communications services, has made the mobile services market much more competitive. The SMR market itself is more competitive now because much of the spectrum is already licensed.⁸

In fact, the entry of wireline carriers into the mobile services market will now benefit the public. For instance, if the prohibition is lifted, the size and resources of wireline carriers would be available to develop technology and services in the SMR market.

As for the concerns about wireline carriers engaging in discriminatory interconnection practices or cross-subsidizing SMR

⁶ Termination Order, 7 FCC Rcd at 4398.

⁷ Id. (footnote omitted).

⁸ See NPRM at ¶ 21. According to a SMR industry spokesperson, 35,000 to 40,000 SMR applications were pending at the Commission as of August 9, 1994. See Communications Daily, September 13, 1994, at 6.

services with revenues from their local exchange service,⁹ the Commission has developed numerous regulatory safeguards to prevent these types of activities. For example, PRTC, like other wireline carriers, is required to follow the Commission's cost accounting rules and affiliate transaction rules contained in Parts 32 and 64 of the Commission's Rules, 47 C.F.R. Parts 32 and 64. These rules help to ensure that regulated local exchange carriers do not subsidize their non-regulated activities with revenues from their regulated telephone service.

The 1993 Budget Act has helped to address the concern about wireline carriers discriminating against competitors in their provision of interconnection. Under Section 332 of the Communications Act as amended by the 1993 Budget Act and Section 201 of the Communications Act, the Commission must order wireline carriers to interconnect with SMR providers (and all other commercial mobile radio service providers) which use interconnected local exchange service as a part of their service if the provider makes a reasonable request for such interconnection.¹⁰ Wireline carriers must engage in good faith negotiations with commercial mobile radio service providers regarding interconnection.¹¹ The Commission has also instituted

⁹ See NPRM at ¶ 18.

¹⁰ 47 U.S.C. § 332(c)(1)(B). See also CMRS Second Report and Order, 9 FCC Rcd at 1497-98.

¹¹ Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, RM-8012,

service provider any form of interconnection arrangement the carrier provides to anyone else.¹¹

In conclusion, the recent changes to the regulation of mobile radio services made by the 1993 Budget Act, the growth of the SMR industry, and the Commission's already extant rules for preventing discriminatory interconnection practices and cross-subsidization by local exchange carriers support the repeal of the prohibition on wireline carriers holding SMR licenses. Therefore, PRTC urges the Commission to lift the prohibition.

Respectfully submitted,



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¹¹ See CMRS Second Report and Order, 9 FCC Rcd at 1498; 47 C.F.R. § 20.11(a).

CERTIFICATE OF SERVICE

I, Ann M. Wilson, do hereby certify that on this 5th day of October, 1994, a copy of the foregoing was delivered by hand to the parties listed below:

Chief, Land Mobile and Microwave Division
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Ann M. Wilson